IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 564 OF 2003

IN

SUMMARY SUIT NO. 796 2003

M/s.Alka Sales Corporation .. Plaintiff

versus

M/s.Galaxy Travels .. Defendant

...

Mr.Gabriel Pillai for the plaintiff.

Mr. Y.K. Sharma for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 9th March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. The only question to be considered is whether the suit is triable as a summary suit.

3. According to the plaintiff, it advanced to the defendant aloan of Rs.12,30,000/- by eight different cheques. The defendant repaid Rs.2,00,000/- leaving

a balance of Rs.10,30,000/-. As the balance amount was not paid, the plaintiff issued a notice demand dated 26th March 2002. The defendant neither replies nor complied. Hence, the plaintiff has filed this suit for recovery of the sum of Rs.10,30,000/-. There is no dispute that the suit is not based on any written contract. The learned counsel for the plaintiff however submits that the loan was advanced to the defendant by cheques i.e. by Negotiable Instruments and therefore, the suit is triable as a summary suit.

4. In my view, a suit based on a negotiable instrument is one wherein the defendant has issued a negotiable instrument to the plaintiff and the plaintiff sues for recovery of the money due under the said negotiable instrument. Whether the loan is advanced by a cheque and not repaid and the suit is filed by the plaintiff, it would not be regarded as a suit based on a negotiable instrument. Hence, the suit cannot be tried as a summary suit. Summons for Judgement is therefore dismissed.

5. Let the suit be tried as a regular suit.

D.G. KARNIK,J